TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 143

THE UNITED STATES OF AMERICA, PETITIONER

vs.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 15, 1937
CERTIORARI GRANTED OCTOBER 11, 1937

SUPREME COURT OF THE UNITED STATES

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1 [Caption omitted.]

In United States District Court, District of Massachusetts

No. 4313, In Equity

UNITED STATES OF AMERICA, PETITIONER,

v.

CHELSEA TRUST COMPANY, A BANKING CORPORATION ORGANIZED BY LAW AND HAVING AN USUAL PLACE OF BUSINESS IN CHELSEA, IN THE DISTRICT OF MASSACHUSETTS, AND HELEN J. STEVENS, A
2 CITIZEN OF BOSTON AND SAID DISTRICT OF MASSACHUSETTS, AS SHE IS ADMINISTRATRIX OF THE ESTATE OF THOMAS MCGOVERN, DECEASED, AND HELEN J. STEVENS AND CATHERINE E. MCGOVERN, BOTH CITIZENS OF SAID BOSTON, AND LENA F. DONOVAN, A CITIZEN OF NEW HAVEN IN THE DISTRICT OF CONNECTICUT, AND ROBERT E. MCGOVERN, A CITIZEN OF GARDNER, AND SAID DISTRICT OF MASSACHUSETTS, AND AN INSANE PERSON NOW CONFINED TO THE STATE COLONY IN THE CITY OF GARDNER, IN THE SAID DISTRICT OF MASSACHUSETTS

Bill of complaint

Filed April 10, 1936

To the Honorable the Judge of the District Court of the United States for the District of Massachusetts sitting in equity:

Now comes the United States of America, your petitioner, and respectfully represents as follows:

1. The said respondent, Chelsea Trust Company, is a banking corporation duly organized and existing under the laws of the State of Massachusetts, and authorized by law to carry on the business of a bank in the said District of Massachusetts.

2. The said respondent, Helen J. Stevens, is the duly appointed administratrix of the estate of one, Thomas McGovern, deceased, acting under an appointment made on or about February 27, 1936, by the Suffolk County Probate Court, located in the said District of Massachusetts.

3. The said respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern are citizens of Massachusetts claiming to be the heirs-at-law and next of kin of the said Thomas McGovern, deceased.

4. The said Thomas McGovern hereinafter referred to as the "veteran" enlisted in the military service of the petitioner, United States of America on or about February 15, 1877, and was honorably discharged on February 14, 1882, after serving in the Light Battery "B" 4th Regiment of Artillery.

5. The said veteran on or about November 11, 1925, was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, located at Hampton, in the State of Virginia,
3 hereinafter referred to as the "Home", and which is now known as the Veterans' Facility, Veterans' Home, Virginia.

6. The said admission into the said "Home" was made upon the sworn application of the said veteran, dated April 17, 1925, and in accordance with the Act of June 25, 1910 (36 Stat. 736; Title 24, Section 136, United States Code), and in which application the veteran stated he was married, had four children, and "nearest relatives none."

7. At the time of said application for admission to said "Home," the said veteran for and in consideration of said acceptance of his application and admittance agreed to the following:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

8. The said veteran died while a member of and at the said Home on February 17, 1928, at which time there was found among his effects a certain bank book #1295 in the name of, and the personal property of the said veteran, showing deposits in the savings
4 department of the respondent, Chelsea Trust Company, of three thousand eight hundred and forty-one dollars and ten cents ($3,841.10).

9. That the said deposits and proceeds thereof in the said respondent bank were personal property of the said veteran and upon his death vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers.

10. That the said personal property, deposits, and proceeds thereof, of said veteran were not reclaimed by any of the respondents or by any legatee or person entitled to take the same by inheritance at any time within five years after the death of said veteran.

11. That the said deposits and proceeds thereof have become a part of the "Post Fund" of said Home, the title to which was transferred to the United States of America under the Act of Congress of July 3, 1930.

12. That your petitioner, United States of America, is the owner of and entitled to the said bank deposits and the proceeds thereof in the respondent Chelsea Trust Company.

13. That your petitioner has requested the respondent bank to transfer and place in the name of your petitioner the said bank book, deposits, and accumulations thereof, which it has refused to do and still refuses to do, as the said sums are being claimed by the respondent administratrix and the respondent and claimed heirs at law of the veteran, and the said bank book, deposits, and accumulations thereof are charged with a trust in the hands of the respondent bank in favor of your petitioner.

14. That your petitioner has no complete and adequate remedy at law.

15. That irreparable loss or damage will result to your petitioner unless some immediate action is taken by this Court.

Wherefore your petitioner prays

1. That the Court find and hold that the sums of $3,841.10 deposited by the veteran Thomas McGovern in the respondent Chelsea Trust Company and contained in book #1295 of said bank, together with all accumulations thereof, is the personal property of the said veteran, and that the petitioner is the lawful owner thereof.

2. That the respondent Chelsea Trust Company be forthwith restrained and enjoined from transferring, assigning, delivering, or disposing of any of the aforesaid deposits and accumulations thereof until the further order of this Court.

3. That the respondent bank may be declared to be a trustee of said deposits of $3,841.10 and accumulations thereof, for the benefit of your petitioner, and that the said respondent bank be ordered and decreed forthwith to pay over said sum to your petitioner.

4. That the respondent Chelsea Trust Company be ordered to transfer and deliver the said deposits and accumulations thereof to your petitioner and to do any and all acts necessary to place the said bank book and deposits and accumulations thereof in the name of your petitioner.

5. That all respondents other than the respondent bank and each of them be forthwith restrained and enjoined from selling, transferring, assigning, encumbering or purporting to transfer, assign or encumber in any manner whatsoever any of the money, deposits or accumulations referred to herein or any right, title or interest in any of said sums until the final order of this Court.

6. And for such further relief as may seem proper to this Honorable Court and as justice may require.

UNITED STATES OF AMERICA.
by FRANCIS J. W. FORD,
United States Attorney,
by Frank W. Tomasello,
FRANK W. TOMASELLO,
Assistant United States Attorney.

6 [*Duly sworn to by Frank W. Tomasello, jurat omitted in printing.*]

In United States District Court

Answer of the Chelsea Trust Company.

Filed April 28, 1936

To the Honorable the Judge of the District Court of the United States for the District of Massachusetts sitting in equity:

And now comes the Chelsea Trust Company and makes answer to the bill of complaint as follows:

1. The Chelsea Trust admits the allegations contained in paragraph one of the bill of complaint.

2. The respondent has no knowledge concerning the allegations contained in paragraph two of the bill of complaint and neither admits nor denies the same but calls upon the petitioner to prove the same.

7 3. The respondent has no knowledge concerning the allegations contained in paragraph three of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

4. The respondent has no knowledge concerning the allegations contained in paragraph four of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

5. The respondent has no knowledge concerning the allegations contained in paragraph five of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

6. The respondent has no knowledge concerning the allegations contained in paragraph six of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

7. The respondent has no knowledge concerning the allegations contained in paragraph seven of the bill of complaint and neither admits nor denies the same, but calls upon the petitioner to prove the same.

8. The respondent has no knowledge concerning the allegations contained in paragraph eight of the bill of complaint and neither admits nor denies the same and calls upon the petitioner to prove the same; and further says that at the time of the service of the subpoena in this action upon it, it had credited and belonging to one Thomas McGovern the sum of five thousand eight hundred and twenty-four dollars and thirty-seven cents ($5,824.37), but whether or not the said Thomas McGovern is the one and same person named in the bill of complaint or not it is unable to determine.

9. The respondent has no knowledge of the allegations contained in paragraph nine of the bill of complaint and neither admits nor denies the same and calls upon the petitioner to prove the same,
8 and says that whether or not the veteran mentioned in the bill of complaint and the said Thomas McGovern the holder of deposit book #1295 are one and the same person it is unable to determine.

10. The respondent has no knowledge of the allegations contained in paragraph ten of the bill of complaint and neither denies nor admits the same and calls upon the petitioner to prove the same.

11. The respondent has no knowledge of the allegations contained in paragraph eleven of the bill of complaint and neither admits nor denies the same.

12. The respondent makes no answer to paragraph twelve of the bill of complaint as it is a conclusion of law.

13. The respondent admits that the petitioner has requested that it transfer the deposit above mentioned to the petitioner and admits that it refused to do so because the deposit book has never been presented to it and it has no way of knowing whether or not the veteran mentioned in the bill of complaint and the owner of the deposit book are or were one and the same person.

14. The respondent has no knowledge of the allegations contained in paragraph fourteen of the bill of complaint and neither admits nor denies the same.

15. The respondent says that it has notice of a bill in equity brought by Helen J. Stevens, of Boston, in the County of Suffolk, as she is administratrix of the estate of Thomas McGovern, also called Thomas McGoveran, late of Chelsea, against the Chelsea Trust Company and that a citation has issued from the Probate Court for the County of Suffolk on said petition, and that said bill in equity prays that the ownership of said bank deposits be determined and that the Chelsea Trust Company be restrained from paying the said deposits.

16. And the Chelsea Trust Company says that it should not be made to answer the bill of complaint filed in the Probate Court and also this bill of complaint; and that since the said
9 Helen J. Stevens, administratrix, has submitted to the jurisdiction of this Honorable Court, she should be ordered to dismiss her bill in equity in the Probate Court.

17. And further answering the respondent says that it is merely a stakeholder in this controversy and asks that it be allowed to pay the said deposit into Court, and that it be allowed its costs and reasonable counsel fee from the funds held by it, and that these proceedings be dismissed as to it.

By its Attorney,

LOUIS R. KIERNAN.

In United States District Court

Answer of Helen J. Stevens as she is administratrix of the Estate of Thomas McGovern, a respondent

Filed April 30, 1936

Now comes Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, deceased, a respondent in the above entitled case, and for answer says:

1. She admits the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

2. She admits the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. She admits all the allegations contained in paragraphs 4, 5, 6 and 7 of said Bill of Complaint.

4. She admits the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. She admits so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent bank were the personal property of the said veteran. She denies that any of said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; and further answering she says that on the death of said McGovern said personal property became part of his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent; and further answering this respondent says that as such administratrix it is her duty to administer in behalf of creditors as well as beneficiaries or distributees.

6. This respondent admits the allegations contained in paragraph 10 of the Bill of Complaint; and further answering says that the reason no heir or next of kin, or administrator of the estate of Thomas McGovern, claimed the personal property now in question within the five year period stated, was because they had no knowledge of the death of said Thomas McGovern until after said five years had run; and further answering this respondent says that if the contract above-mentioned is valid, the petitioner and its predecessor were trustees for the benefit of the heirs or next of kin of said Thomas McGovern, and as such trustees it was their duty to bring to the knowledge of said persons the death of their parent so that proper legal steps could be taken for the acquisition of the said deposits by the persons legally entitled thereto; and further answering this

respondent says that the petitioner or its predecessor either intentionally or negligently prevented any knowledge of the death of Thomas McGovern reaching his widow and children within the period of said five years, so that they never had any opportunity to make a claim for said property.

11 7. This respondent denies all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint; and further answering says that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering, this respondent says the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, this respondent says that she has demanded from the petitioner and the respondent bank the personal property of her intestate which is in their hands or control; and further answering, this respondent prays that this Court will direct the respondent bank, and the Veterans Facility, a department of the United States Government, to pay over and deliver to her as she is administratrix of the estate of Thomas McGovern, all personal estate of said decedent in their hands, so that said property may be administered according to law.

HELEN J. STEVENS,
Administratrix as aforesaid.
By JAMES E. CARROLL.

In United States District Court

Answer of Helen J. Stevens, Catherine E. McGovern, and Lena F. Donovan, respondents

Filed April 30, 1936

Now come Helen J. Stevens, Catherine E. McGovern, and Lena F. Donovan, three of the respondents in the above entitled case, and for answer say:

1. They admit the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

12 2. They admit the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. They admit all the allegations contained in paragraphs 4, 5, 6, and 7 of said Bill of Complaint.

4. They admit the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. They admit so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent Bank were the personal property of the said veteran. They deny that said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; and further answering say that on the death of the said McGovern said personal property became part of his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent.

6. These respondents admit the allegations contained in paragraph 10 of the Bill of Complaint, and further answering say that the Board of Managers of the National Home for Disabled Volunteer Soldiers and its successor either intentionally or negligently prevented any knowledge of the death of the father of these respondents reaching them within the period of said five years, so that they never had an opportunity to make any claim for the property in the hands or control of said Home; and further answering, these respondents say that if the contract above-mentioned gave any rights to the petitioner it made the petitioner and its predecessor trustees of the property owned by the decedent at the time of his
13 death and if said contract is a valid contract, the petitioner and its predecessor were trustees for your respondents, and as such trustees it was their duty to inform your respondents of the death of their parents so that they might present their claim as an heir or next of kin; and that the limitation in the Statute did not run against your respondents until the trust had been repudiated and such repudiation brought to their knowledge.

7. These respondents deny all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint, and further answering, say that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering these respondents say the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, these respondents pray that this Court will direct the respondent Bank, and the Veterans Facility, a department of the United States Government, to pay over and deliver to the respondent Helen J. Stevens, as she is administratrix of the estate of Thomas McGovern, the person entitled to all the personal estate of said decedent, all personal property in their hands which was the property of Thomas McGov-

ern at the time of his death, to wit: September 17, 1928, so that said property may be administered according to law.

HELEN J. STEVENS
CATHERINE E. McGOVERN
LENA F. DONOVAN
by JAMES E. CARROLL,
Their Attorney.

14 In United States District Court

Answer of Robert E. McGovern, an insane person, a respondent, by his guardian James E. Carroll

Filed April 30, 1936

Now comes James E. Carroll as he is guardian of Robert E. McGovern, an insane person, and states that on February 27, 1936, he was appointed guardian of said Robert E. McGovern, an insane person, by the Probate Court in and for the County of Suffolk and Commonwealth of Massachusetts, and as said guardian he answers to the petition in the above entitled case for his ward.

1. The respondent by his guardian admits the allegations contained in paragraphs 1 and 2 of the Bill of Complaint.

2. The respondent by his guardian admits the allegations contained in paragraph 3 of the Bill of Complaint except that Lena F. Donovan is not a citizen of Massachusetts, but is a citizen of New Haven, Connecticut.

3. The respondent by his guardian admits all the allegations contained in paragraphs 4, 5, 6, and 7 of said Bill of Complaint.

4. The respondent by his guardian admits the allegations contained in paragraph 8 of the Bill of Complaint except the statement that the decedent died February 17, 1928, when in fact he died September 17, 1928.

5. The respondent by his guardian admits so much of the allegations contained in paragraph 9 of the Bill of Complaint which state that the said deposits and proceeds thereof in the said respondent bank were the personal property of the said veteran; this respondent by his guardian denies that said property vested in the Board of Managers of the National Home for Disabled Volunteer Soldiers at the death of the decedent; aid further answering says that on the death of the said McGovern said personal property became part of
15 his estate subject to be administered according to law; that if said Home had any claim against said funds it was a claim as a creditor, which claim would be proved and collected in an orderly manner in accordance with law in the administration of the estate of the decedent.

6. This respondent by his guardian admits the allegations contained in paragraph 10 of the Bill of Complaint; and further answer-

ing says this respondent was not mentally capable of making any claim as an heir or next of kin of his father Thomas McGovern during the five years mentioned; that since May 24, 1918, this respondent has been an insane person committed by the Courts of the Commonwealth of Massachusetts; that on September 17, 1928, the date of death of his father, this respondent was an insane person and an inmate of the Gardner State Hospital, Gardner, Massachusetts, where he is now located; and further answering this respondent by his guardian says that if said contract above-mentioned is a valid one the said petitioner and its predecessor were trustees for him and had a duty as said trustee to bring to him in a legal manner knowledge of the fact that he had a claim; and further answering this respondent by his guardian says that the petitioner or its predecessor either intentionally or negligently prevented any knowledge of the death of said Thomas McGovern reaching any person in behalf of said respondent within the period of five years so that the respondent or any legal person entitled to represent him had no opportunity to make a claim for said property during said period; and further answering your respondent by his guardian says that because of the disability of the respondent the five-year period could not run legally against any claim which said respondent had in respect to the personal property in question.

7. This respondent by his guardian denies all the allegations contained in paragraphs 11, 12, 13, 14, and 15 of the Bill of Complaint, and further answering, says that the Act of June 25, 1910 (36 Stat. 736; Title 24, sec. 136, U. S. Code), on which the alleged agreement contained in the Bill of Complaint is based, did not on the
16 death of a deceased member of a Home, vest his personal property in the Board of Managers of the Home if said deceased veteran left heirs or next of kin; that the said statute and agreement is only applicable to the disposition of personal property of deceased members when that deceased member leaves no heirs; and further answering, this respondent by his guardian says the petitioner has come into Equity without clean hands and is, therefore, not entitled to relief; and further answering, this respondent by his guardian prays that this Court will direct the respondent bank and the Veterans Facility, a department of the United States Government, to pay over and deliver to the respondent Helen J. Stevens, as she is administratrix of the estate of Thomas McGovern, the person entitled to all the personal estate of said decedent, all personal property in their hands which was the property of Thomas McGovern at the time of his death, to wit: September 17, 1928, so that said property may be administered according to law.

ROBERT E. MCGOVERN.
By his guardian, JAMES E. CARROLL.

In United States District Court

Agreed statement of facts

Filed May 1, 1936

Now come the parties by their respective counsel and agree upon the facts as hereinafter stated, with the understanding that the parties reserve the right to object to the materiality of any of them, and may offer other material evidence not inconsistent with such facts.

One Thomas McGovern, sometimes known as Thomas McGoveran, enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, said McGovern was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in
17 the State of Virginia, which place is hereinafter referred to as the "Home." Attached hereto and made a part hereof marked "A" is a copy of his application for admission to the Home. In his application for admission to the Home McGovern stated he was married and had four children. In becoming a member of the Home he submitted himself to the provisions of the Act of June 25, 1910, known as 36 Stat. 736 entitled 24 sec. 136, U. S. Code, and in accordance with the provisions of that Statute said McGovern agreed with the Home as follows:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

Said McGovern died September 17, 1928, while a member and while residing at said Home which was about two years and ten months after his entrance into said Home.

At the time of his death his wife Anne J. McGovern, was living in Boston, Massachusetts, with her daughter the respondent Helen J.

Stevens; that a daughter Catherine E. McGovern, a respondent, was also living in Boston; that another daughter Lena F. Donovan,
18 also a respondent, was living in New Haven, Connecticut, and a son Robert E. McGovern, a respondent, was an insane person and an inmate of the State Hospital at Gardner, Massachusetts, having been committed as an insane person in the year 1918 by a Massachusetts court; that the said widow and children named above were the heirs-at-law and next of kin of said McGovern at the date of his death;

That no knowledge of said McGovern's death had reached these persons at any time in the period which constituted five years after September 17, 1928;

At the time of his admission to said Home said McGovern was a resident of the City of Chelsea, Suffolk County, Massachusetts, where he had resided since 1889, and which City was his legal domicile at the time of his death; that since the year 1904 the said McGovern had not lived with his wife or the respondent daughters who had no knowledge of his whereabouts in the last twenty years of his life; that the respondent son Robert E. McGovern lived with his father in said Chelsea up to the time he was committed as an insane person in 1918; that the first knowledge of the death of the said decedent received by any of the respondents was in a letter from the said Home dated October 19, 1935, addressed to the respondent Stevens;

That after the death of said McGovern no attempt was ever made by any official or any one in behalf of said Home to locate the said wife and said four children of said McGovern;

That at the time of McGovern's death the following personal property constituted his estate:

Cash on person	$5.62
Deposit at the Home	126.00
Personal Effects	2.50
A savings bank in the Chelsea Trust Company, Chelsea, Massachusetts, Account No. 1295, showing a balance as of Jule 3, 1925, of	3,841.10
19 A savings bank book in the Boston Five Cents Savings Bank, Boston, Mass., Account No. 701,775, showing a balance as of October 15, 1925	1,980.10

That neither of the said savings accounts was the proceeds of a Government pension or any other kind of gratuity from the Government, but was said McGovern's own personal estate;

That Anne J. McGovern, the wife of said Thomas McGovern, died March 4, 1933, a resident of said Boston, and that Helen J. Stevens has been duly appointed administratrix of her estate;

That said Helen J. Stevens is the duly appointed administratrix of the estate of said Thomas McGovern;

That James E. Carroll, of Boston, is the duly appointed guardian of Robert E. McGovern, an insane person.

FRANK W. TOMASELLO,
Assistant U. S. Attorney for Mass. District.
JAMES E. CARROLL.
Attorney for Helen J. Stevens, Administratrix, estate of Thomas McGovern, and in her individual capacity, Catherine E. McGovern, Robert E. McGovern, Lena F. Donovan, Respondents.

20 "A"

(Form No. 1)

(See "Explanations and Directions" on Third Page)

Application for Original Admission to the National Home for Disabled Volunteer Soldiers. Headquarters Office, National Military Home, Ohio. Branch Homes and P. O. Addresses: (Omitted)

COUNTY OF SUFFOLK,
State of Mass., ss:

On this 17th day of April, A. D. 1925, personally appeared before me (1) Thomas McGovern within and for the County and State aforesaid (2), aged 75 years; height 5-7 feet; complexion Ruddy; a resident of (3) Chelsea, County of Suffolk, State of Mass.; who being duly sworn, deposes and says, that he was born in (4) Ireland; that he is by occupation a (5) watchman; that he is (6) married; that he has (7) 4 children living; and that the name and address of his wife, or nearest relatives, is (8) unknown, and that he served in the armed forces of the United States 5 yrs. Regular times during the (9) No. war, and was honorably discharged from each service, as follows:

Service	Date of entry into service, and rank	Where	Company and regiment, or other organization	Date and place of discharge, and rank	Cause of discharge
1st. 2d. 3d. 4th.	Feb. 15, 1877 Private	Boston	B, 4th U. S. Arty	Newport, R. I. Feb. 14, 1882 Private	End of service Expiration

That he is receiving No Dollars per month (10)—on Certificate No. —, and being unable on account of his disability to earn his living, desires admission to the National Home for Disabled
21 Volunteer Soldiers. That he has never been a member of any Branch of the National Home, and was never dishonorably discharged from any State Home for Disabled Volunteer Soldiers and Sailors.

Explanations and Directions

(Memorandum: Page 2 of Exhibit "A" is omitted, as the items enumerated are left blank and are immaterial. James S. Allen, Clerk.)

The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the Home.

(11) THOS. McGOVERN.
(Address) *110 Beacon St., Chelsea, Mass.*

Witness:
D. H. SULLIVAN.

Sworn to and subscribed before me the day and year first above written, and I hereby certify that the foregoing affidavit was read and fully explained to Thomas McGovern before he executed it.

[SEAL] DANIEL H. SULLIVAN,
Notary Public.

22 Surgeon's Certificate

I have carefully examined the above named applicant, and certify that he is (12) permanently temporarily incapacitated for earning his living, as a result of the following disabilities (13), viz: Rheumatism; Valvular Disease of Heart; Weak leg muscles; Hemorrhoids.

Mental condition of applicant Good.

Necessity for medical treatment, services of an attendant, etc., only as above.

B. VAN MAGUESS,
Surgeon, Chelsea, Mass.

(To be filled in at Branch.)

Eyes blue. Hair f Red. Religion Cath. Read and Write Yes.

(Endorsed:) Register No. — War Regular Army. Application for Original Admission to the National Home for Disabled Volunteer Soldiers of Thomas McGovern, B Co. 4th Reg't. U. S.

Arty. National Military Home, Ohio, Apr. 24, 1925, 1925. Approved for admission (Name undecipherable). Asst. Gen'l. Treasurer, National Home for D. V. S. Admitted to Southern Branch ------, 19--, -------.

23 *Recital as to hearing*

On the said 1st day of May 1936 said cause comes on to be heard on the pleadings and agreed statement of facts, the Honorable Elisha H. Brewster, District Judge, sitting, and on the 26th day of said May, an opinion of the court is announced, ordering a decree to be entered for the United States.

In United States District Court

Final decree

June 5, 1936

June 5, 1936. E. H. B., D. J.

BREWSTER, J.: This cause came on to be heard at this term of the court and upon pleadings and proofs presented by the parties, and thereupon, upon consideration thereof, it is,

Ordered, Adjudged, and Decreed as follows:

1. That the respondent, Chelsea Trust Company, pay over to the United States of America through its representative, Thomas Quinn, General Counsel of the Veterans' Bureau for the District of Massachusetts, the full amount represented by the deposit account together with all accumulations thereon standing in the name of Thomas McGovern, sometimes known as Thomas McGoveran, the deceased veteran named in the bill of complaint, less taxable costs and the attorney's fee of twenty-five dollars ($25.00).

2. That the respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern are perpetually restrained and enjoined from transferring, encumbering, or in any way asserting any claim in and to said deposits in the Chelsea Trust Company, together with all accumulations thereon.

By the Court,

JAMES S. ALLEN, *Clerk.*

24 *Recital as to appeal*

From the foregoing final decree, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern, by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, respondents, claimed an appeal on August 31, 1936, to the U. S. Circuit Court of Appeals for the First Circuit, and an affidavit of poverty having been filed, said appeal is allowed.

In United States District Court

No. 4313 Equity

UNITED STATES OF AMERICA

v.

CHELSEA TRUST COMPANY ET AL.

No. 4314 Equity

UNITED STATES OF AMERICA

v.

BOSTON FIVE CENTS SAVINGS BANK ET AL.

Opinion

May 26, 1936

BREWSTER, J.: The above entitled suits are brought to reach bank deposits standing in the name of one Thomas McGovern, sometimes known as Thomas McGoveran. Both suits may be conveniently disposed of in one opinion.

STATEMENT OF FACTS

On November 11, 1925, McGovern, an honorably discharged soldier, was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, at Hampton, Virginia. His admission was subject to the Act of June 25, 1910 (Title 24, U. S. C. A. 136), and in his application he agreed as follows:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Military Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; * * *"

McGovern died September 17, 1928, while still a member of the Home. He was survived by a wife and four children, one of whom was a son who had been declared insane in 1918.

Since 1904 McGovern had not lived with his family, and for the last twelve years of his life his wife and children had no knowledge of his whereabouts. None of the heirs or next of kin had knowledge

of McGovern's death prior to October 19, 1935. No one on behalf of the National Home made any attempt to locate McGovern's wife or children. In his application, McGovern had stated that he did not know their address.

At the time of his death McGovern had a deposit in the Chelsea Trust Company, respondent in Equity No. 4313, which on July 3, 1925 amounted to $3,841.10, represented by account No. 1295. He also had a deposit in the Boston Five Cents Savings Bank, respondent in Equity No. 4314, which on October 15, 1925 amounted to $1,980.10, represented by account No. 701,775.

Conclusions of law

The United States asserts claim to these deposits under the provision of the above cited Act of 1910, the pertinent provisions of which are:

"SEC. 136. Disposition of Personal Property of Deceased Members. The application of any person for membership in the
26 National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, * * * shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, * * * and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. * * *."

The issue presented necessitates a construction of this statute. On behalf of the respondent heirs, it is urged that the five-year limitation upon their right to claim the personal property of a deceased member does not apply unless the deceased left no heirs at law or next of kin. I do not so read the statute. I hold it to mean that if a member dies, leaving no heirs at law or next of kin the title to personal property passes absolutely to the home; but if he dies leaving a will, or heirs, the property vests in the home subject to the right of the legatee or any person entitled by inheritance to lay claim to the property, if claimed within five years. This construction reconciles and gives effect to all provisions of the Act. It is a familiar canon of construction, requiring no citation, that a statute should be so construed. In the circumstances of this case it is my opinion that the rights of the United States to these funds are not affected by the fact that the son of the deceased soldier was legally incompetent.

Each of the respondent banks, in its answer, has asked for costs including reasonable counsel fees, and I grant this prayer.

The United States is entitled to a decree ordering each of the respondent banks to pay over to a representative of the government authorized to receive same, and designated in the decree,
27 the full amount represented by the respective deposit accounts above noted, less taxable costs and the attorney's fee of $25.00; and perpetually restraining and enjoining the other respondents from transferring, encumbering or in any way asserting any claim in and to said deposits, together with all accumulations thereon.

In United States District Court

Assignment of errors

Filed August 31, 1936

The respondents, Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, and Helen J. Stevens as she is administratrix of the estate of Anne J. McGovern, in this action in connection with their petition for appeal make the following assignment of errors which they aver occurred in the trial of this case in said District Court and in the rendition of judgment against the defendant appearing on record herein:

1. The Court erred in its conclusion of law construing the following statute:

Title 24 U. S. C. A. 136

"SEC. 136. Disposition of Personal Property of Deceased Members. The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, * * * shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, * * * and that all personal property of said applicant shall, upon his death,
28 while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. * * *"

by deciding that if a member dies leaving no heirs at law or next of kin the title to personal property passes absolutely to the Home; and in deciding that when a member dies leaving a will or heirs the property vests in the Home subject to the rights of the legatee or any person entitled by inheritance to lay claim to the property if

claimed within five (5) years; and in deciding that under the circumstances of this case the rights of the petitioner, the United States, to the fund is not affected by the fact that the son of the deceased soldier, to wit, the respondent Robert E. McGovern (an insane person) was legally incompetent.

Your respondents aver that these conclusions of law are erroneous in as much as no property could vest in the United States so long as the deceased soldier was survived by a widow and four children, his heirs at law and next of kin; that at best the statute gave the United States of America a claim as a creditor against the estate of the deceased soldier to be perfected by the creditor through orderly probate proceedings; that the title of the United States to the property could never be perfected until it had been established that the deceased soldier left no heirs; that the five-year statute for claimants runs only against those persons who are remotely connected with the deceased soldier and claiming to be heirs, as every person leaves heirs but every person's heirs cannot be ascertained, mostly because of remoteness.

Your respondents aver that no statute of limitations can run against a person under disability; that at the time of the death of the deceased soldier his son, the respondent Robert E. McGovern, was an insane person and continues as such up to the present day,
and at no time had any opportunity to assert his claim as an
29 heir, nor had his mother or his sisters knowledge of the death
of his father to assert the claim in his behalf within the time specified by the statute.

Your respondents further aver that the Court erred in its conclusions of law because the said statute is unconstitutional in that it deprives persons of their property without due process of law.

2. The Court erred in ordering a decree in favor of the petitioner, the United States of America, and in directing the respondent bank, the Chelsea Trust Company, to pay over to the Government the full amount represented by the deposit in said bank involved in this case, less taxable costs and attorney's fees.

Wherefore, the respondents Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, and Helen J. Stevens as she is administratrix of the estate of Anne J. McGovern, pray that the decree in said cause be reversed and the cause remanded with instructions to the Trial Court as to further proceedings therein, and for such other and further relief as may be just in the premises.

JAMES E. CARROLL,
Attorney for Appellants.

On the 31st day of August A. D. 1936, affidavits of poverty were filed by Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, and Helen J. Stevens, Administratrix of estate of Thomas McGovern.

In United States District Court

Order as to affidavits of poverty

August 31, 1936

This matter coming on for a hearing by way of motion of the attorney for the respondents Helen J. Stevens, Catherine
30 E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll, Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, in the above entitled action, supported by the affidavits of said respondents, and it appearing therefrom that the respondents have just cause of action against the United States of America and Chelsea Trust Company, and are unable to pay the cost of said action by reason of their poverty,

Now, therefore, it is ordered, and the Clerk is instructed to accept and file all necessary papers, serve all processes and perform all duties in such case without prepayment of costs by these respondents.

By the Court.

ELISHA H. BREWSTER,
U. S. District Judge.

In United States District Court

Praecipe for record

Filed November 4, 1936

To the Clerk of the United States District Court for the District of Massachusetts:

You will please incorporate in the transcript of record on appeal to the United States Circuit Court of Appeals for the First Circuit in the above entitled cause the following:

1. The Bill of Complaint.
2. The Answers of all Respondents.
3. Agreed Statement of Facts including Application of Thomas J. McGovern for admission as a member of the Southern Branch of the National Home for Disabled Volunteer Soldiers at Hampton, Virginia.
4. Opinion of Brewster, J. and Final Decree.
5. Recital of filing of Appeal of all Respondents except Chelsea Trust Company.

31 6. Petition for Severance of the respondent Chelsea Trust Company from the Appeal.

7. Assignment of Errors.
8. Order allowing Appeal.
9. Recital of filing of Affidavits and Petition for Leave to prosecute Appeal in forma pauperis.

10. Order allowing prosecution of appeal in forma pauperis.
11. Citation and Admission of Service.
12. Praecipe of Appellant with Admission of Service.
13. Clerk's Certificate.

Witness this 3rd day of November A. D. 1936.

JAMES E. CARROLL,
Attorney for Appellants.

Due personal service of the within praecipe by copy is hereby admitted this 4th day of November A. D. 1936.

FRANK W. TOMASELLO,
Attorney for Appellee.

In United States District Court

Petition for severance of Chelsea Trust Company

Filed September 3, 1936

Now come Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, Robert E. McGovern by his guardian James E. Carroll and Helen J. Stevens as she is administratrix of the estate of Thomas McGovern, respondents in the above action, by their attorney, and state that the respondent, the Chelsea Trust Company, will not appeal from the decree of June 5, 1936, made in the
32 above entitled action, and they pray that the said respondent, Chelsea Trust Company, be severed from the appeal.

By their attorney,

JAMES E. CARROLL.

SEPT. 2, 1936.

I hereby assent to the filing of the within.

BERTHA R. KIERNAN,
Attorney for Chelsea Trust Co.

SEPT. 8, 1936.

Allowed:

ELISHA H. BREWSTER,
U. S. District Judge.

Recital as to citation

A citation on appeal to the United States Circuit Court of Appeals was issued on behalf of the respondents on the 31st day of August, A. D. 1936, and was made returnable in said appellate court on September 30, 1936. Service of said citation was duly acknowledged by the United States Attorney.

33 [Clerk's Certificate to foregoing transcript omitted in printing.]

(Memorandum. Orders of enlargement of time for docketing case to, and including November 28, 1936, are here omitted. A. I. Charron, Clerk.)

34 In United States Circuit Court of Appeals, First Circuit

Docket entries

Upon motion filed November 14, 1936, leave was granted appellants to proceed in forma pauperis.

Thereafter, to wit, on January 15, 1937, this case came on to be heard before Honorable George H. Bingham and Honorable James M. Morton, Jr., Circuit Judges, sitting, counsel in open court stipulating and consenting that the case be also submitted on briefs to Honorable Scott Wilson, Circuit Judge.

35 In United States Circuit Court of Appeals for the First Circuit

October Term, 1936

No. 3201

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.,
DEFENDANTS, APPELLANTS

v.

UNITED STATES OF AMERICA, PETITIONER, APPELLEE

Appeal From the District Court of the United States for the District of Massachusetts

Before BINGHAM, WILSON, AND MORTON, JJ.

Opinion of the court

Filed March 15, 1937

BINGHAM, J.: This is an appeal from a decree of the Federal District Court for Massachusetts ordering the Chelsea Trust Company of Chelsea, Massachusetts, one of the defendants, to pay to the plaintiff through its representative, Thomas Quinn, General Counsel of the Veterans' Bureau for the District of Massachusetts, the full amount of the deposit and accumulations thereon standing in the name of Thomas McGovern, the deceased veteran named in the bill of complaint; and enjoining the other defendants from transferring, encumbering, or in any way asserting any claim to said deposit and

accumulations. The action is a suit in equity brought in the name of the United States against the Chelsea Trust Company, a Massachusetts corporation doing a banking business in Chelsea,
36 Massachusetts, and Helen J. Stevens, a citizen of Massachusetts, individually and as administratrix of both the estate of Thomas McGovern and the estate of his deceased widow, and Catherine E. McGovern, a citizen of Massachusetts, Lena F. Donovan, a citizen of Connecticut, and Robert E. McGovern, an insane person, also a citizen of Massachusetts. The action is brought to have a deposit in the defendant bank, standing in the name of Thomas McGovern at the time of his death, declared the property of the plaintiff for the benefit of the Board of Managers of the National Home, at Hampton, Virginia.

The action arises out of the following facts which are stipulated by the parties or admitted by the defendants' answers to the allegations of the bill of complaint.

It appears that Thomas McGovern enlisted in the United States Army in 1877 and was honorably discharged in 1882; that on November 11, 1925, when 72 years of age, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers, at Hampton, Virginia, under the provisions of the Act of Congress of June 25, 1910 (Title 24, s. 136, U. S. C. A.); that in his application for admission McGovern entered into an agreement in accordance with the requirements of said Act; that he died September 17, 1928, at the home, while a member thereof; that at the time of his death his wife, Annie J. McGovern, resided in Boston; that Helen J. Stevens and Catherine E. McGovern, daughters of said McGovern, were then living in Boston, and that a daughter, Lena F. Donovan, was living in New Haven, Connecticut, and a son, Robert E. McGovern, at Gardner, Massachusetts, having been committed as an insane person to the State Hospital in 1918; that the widow and children were his heirs at law; that at the time of McGovern's death his legal domicile was in Chelsea, Massachusetts, which was his residence at the time of his admission to the home; that he had not lived with his wife and daughters since 1904, who had no knowledge of his whereabouts for the last twenty years of his life; that the father and son had lived together in Chelsea up to 1918, when the latter was committed as an insane person; that the first knowledge of McGovern's death received by any of the defendants was on October
19, 1935, in a letter from the home addressed to the daughter,
37 Mrs. Stevens; that after McGovern's death no official or any one in behalf of the home made any endeavor to locate the wife or any of the four children; that at the time of his death he had a deposit in the defendant bank, account No. 1295, showing a balance due him as of July 3, 1925, of $3,841.10; that this deposit was not the proceeds of a government pension or any other kind of gratuity from the government, but was his own personal estate; that the wife,

Annie J. McGovern, died March 4, 1933, in Boston, where she resided; that the defendant Helen J. Stevens had been duly appointed administratrix of the estates of her mother and father; and that James E. Carroll, of Boston, had been duly appointed guardian of the son.

In his application for admission to the home, McGovern stated that he was married, that he had four children living, but that their names and addresses were unknown.

The Act of Congress of June 25, 1910, c. 384, s. 1 (36 Stat. 736; Title 24, c. 3, s. 136 U. S. C. A.), provides:

"Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said Home, that on the death of said applicant while a member of such Home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said Home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided."

This is understood to be the first time the validity of the Act, insofar as it relates to personal property owned by a member of a
38 home at the time of his death, no part of which was pension money, or the proceeds of pension money, has been questioned. But here the appellants contend that the Act is unconstitutional, insofar as it undertakes, upon the member's death, to vest title to such property in the Board of Managers where he leaves surviving him heirs or next of kin, and also insofar as it subjects them to a proceeding to reclaim the same within five years after the member's death without requiring notice of the death to be given, so that they may assert a reclamation claim.

The Act makes no provision of any kind requiring the Board of Managers or any one connected with the home to give notice to the heirs or next of kin of the death of a member, whether they know or have reason to believe that he left heirs or next of kin or not. It seems to us that if Congress had the power to legislate concerning the devolution of the personal property of a deceased member, none of

which was pension money or derived from the government, that in order to foreclose the rights of heirs or next of kin within five years after the death of the member, it should have provided for the giving of notice of his death by publication and otherwise, so that the heirs or next of kin would at least have an opportunity to assert a claim of reclamation within the period of five years limited by the statute; and that in no event should they be deprived of their rights in the estate of the deceased member without notice and an opportunity to assert a claim. See Wilbur v. Tobey, 16 Pick. 177, 180; Hamilton v. Brown, 16 U. S. 256, 268, 269, 270, 275; Christianson v. King County, 239 U. S. 356. Here no notice was given or attempted to be given, and no knowledge of the death of the member was acquired until October 19, 1935, more than five years after his death on September 17, 1928, when a letter from the home giving such information was received by the defendant Stevens.

But independent of the fact that the Act makes no provision for notice, the question arises, under what provision of the Constitution Congress acquired power to enact a law providing that, upon the death of a member, all of his personal property of the character here in question shall "at once pass to and vest in said Board of Managers"

and not in the administrator or administratrix of his estate
39 appointed under the laws of the State in which he was domiciled at the time of his death, and where it will be administered according to such laws for the benefit of his creditors and heirs at law or next of kin. No such provision has been called to our attention and we know of none.

The tenth amendment to the constitution provides that "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

From a time antedating the adoption of the Federal Constitution, the States have uniformly enacted laws providing for the devolution of property of intestates dying domiciled within their borders, and such laws have been enacted and are in force in Massachusetts, where McGovern was domiciled at the time of his death. They provide for the appointment of administrators to administer the estate of persons dying intestate (Gen. Laws of Mass., 1921, c. 193), for the ascertainment of the property belonging to the estate, the determination and payment of its debts, and the distribution of the remainder among the heirs. And chapter 190 provides that the surviving wife, after payment of the debts of the deceased, and the charges of his last sickness and funeral, and of the settlement of his estate, and subject to chapter 196, if he leaves issue surviving, shall take one-third of the personal estate, and the remainder shall be divided in equal shares among his children.

Under the laws of Massachusetts the title to the personal property of a decedent vests, in the first instance, in the administrator; but under the Act of Congress of 1910 it is made to vest in the Board of

Managers, and the title becomes absolute in that board unless the heirs and next of kin by some good fortune, not provided for in the Act, acquire notice of the death of the member and begin reclamation proceedings within five years of his death.

We think that Congress in the enactment of the above statute, insofar as it provides that the personal property of a deceased member, no part of which was acquired from the government as pension money or bounty, "shall at once pass to and vest in the Board of Managers", acted without authority and in violation of the reserved rights of the States; that the Act in this respect and to this
40 extent is unconstitutional and void (see United States v. Butler, 297 U. S. 1); and that the contract based upon the Act rises no higher than the Act on which it is based. It was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will.

Whether the pension money of a deceased member of a home, in the hands of its treasurer at the time of death, was included within the provisions of the Act of 1910, was a close and doubtful question. It was held by this court in 1930 not to be. Durack v. National Home for Disabled Volunteer Soldiers, 44 Fed. (2d) 516. But in December 1936, when the question came before the Supreme Court, it was held that such money was embraced within the terms of the Act of 1910 and went to the new class of beneficiaries named in that Act. National Home for Disabled Volunteer Soldiers v. Wood, 299 U. S. ; 81 Law Ed. Adv. Op. 105. It is assumed, so far as this case is concerned, that Congress had the power to determine how its own gifts of pension money, remaining in the hands of the treasurer of a home at the time of a member's death, should be disposed of; and that, as to such money, the Act of 1910 was constitutional. But we have no such question before us for decision.

The decree of the District Court is vacated, and the case is remanded to that court with directions to enter a decree in favor of the administratrix of the estate of Thomas McGovern.

Dissenting opinion

MORTON, J. (Dissenting): Admission to the Soldiers' Home was a special privilege, to which the Government had right to attach any conditions which it saw fit. Those with which we are concerned are contained in an Act of Congress. No question can, therefore, be raised as to their reasonableness, as it might be perhaps if they had been made by an administrative board. McGovern agreed in the most explicit way, that if admitted to the Home, all his personal property should, upon his death while a member of the Home, at once pass to and vest in its Board of Managers, subject to being "reclaimed" by any person entitled to take it by inheritance at any time within five years after his death. The Act itself provides that acceptance
41 of the application shall constitute such a contract, and it also provides for explicit notice of this provision to all applicants for admission.

Contracts to dispose of one's property in a specified way at one's death are valid. Ex parte Simons, 247 U. S. 231; Jenkins v. Stetson, 9 Allen (Mass.) 128; Parker v. Coburn, 10 Allen (Mass.) 82. It has also been held that the particular form which the contract takes is not material; if the intention is clear and the consideration adequate and there was no taint of fraud or over-reaching, the contract will be enforced. Strakosch v. Connecticut Trust & Safe Deposit Co., 114 Atl. 660 (Conn.); Best v. Grolapp et al., 69 Neb. 811, 96 N. W. 641, per Roscoe Pound, Commissioner, s. c. 5 Am. & Eng. Annotated cases 491; Keefe v. Keefe et al., 125 Pac. (Cal.) 929; Johnson v. Hubbel, 5 Am. Dec. 773, with full notes.

My brethern refer to the fact that no notice of McGovern's death was sent to his family by the authorities of the Home, and intimate that there should have been a provision for such notice, or at least for notice by publication in the Act, in order to make it valid. But Congress may well have thought that if an inmate's relatives had so completely lost touch with him that they did not learn of his death for five years after it occurred, it would be proper that such personal property as he left should go to the Government on whose bounty he had been living, rather than to them. The whole matter is one of contract, and I see no sufficient reason for not giving full effect to the contract which McGovern made. Nat'l Home v. Wood, 299 U. S.—It does not seem to me that in imposing this condition on admissions to the Home Congress infringed the reserved right of the States to control the disposition of the property of decedent or in any other respect acted unconstitutionally. I think that the judgment appealed from should be affirmed.

42 In United States Circuit Court of Appeals

Final decree

March 15, 1937

This cause came on to be heard January 15, 1937, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 15, 1937, here ordered, adjudged and decreed as follows: The decree of the District Court is vacated, and the case is remanded to that court with directions to enter a decree in favor of the administratrix of the estate of Thomas McGovern.

By the Court.

ARTHUR I. CHARRON, *Clerk.*

[Clerk's Certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

File No. 41, 624. U. S. Circuit Court of Appeals, First Circuit. Term No. 143. The United States of America, Petitioner, vs. Helen J. Stevens, Administratrix, et al. Petition for a writ of certiorari and exhibit thereto. Filed June 15, 1937. Term No. 143 O. T. 1937.